D.B.CIVIL SPECIAL APPEAL NO. 250/2006
Giriraj Prasad Saini
v.
Deputy Secretary, Department of Labour & ors.

Date of order : 02.04.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri Chiranji Lal Saini for the appellant

This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging the decision of the State Government refusing to make reference of the industrial dispute raised by the appellant observing that the dispute had been raised after fifteen years without any explanation of the delay.

Shri Chiranji Lal Saini appearing for the appellant submitted that the State Government can not decline reference on account of delay. According to the counsel it is the Labour Court which can decline to grant relief on the ground of belated raising of dispute but the Government has no discretion in the matter. Counsel also submitted that the appellant had alleged violation of not only section 25-F but also sections 25-G and 25-H of the Industrial Disputes Act and therefore, the fact that services of the appellant

were terminated in 1988 and the dispute was raised in 2003 was immaterial. It was also stated that the Government had made reference in similar dispute for adjudication by the Labour Court despite delay.

It is not in dispute that the services of the appellant were terminated on 28.1.1988 whereas the dispute was raised on 26.12.2003, that is, after fifteen years. The claim was considered by the Conciliation Officer who submitted failure report under section 12(4) of the Act. Sub-section (5) of section 12 lays down that if on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Labour Court, Tribunal etc., it may make such reference. Where the appropriate Government does not make a reference, it shall record and communicate its reasons therefor.

On a plain reading, it is manifest that while exercising power under section 12(5) of the Act the appropriate Government is not supposed to act as a post office and make reference as a matter of course in routine. The words “is satisfied that there is a case for reference” and “it may make such reference” leave little room for doubt that the State Government has to satisfy itself about the existence of dispute. No doubt, as held by the Supreme Court, the Government is not supposed to consider the merit of the

claim but where dispute is raised after inordinate delay the applicant/workman is required to satisfy the Government that there was reasonable cause for not raising dispute earlier. The underlying object of the Industrial Disputes Act is to secure industrial peace; where dispute is raised after fifteen years it may disturb the industrial peace which would not be in consonance with the object of the Act.

Submission of the appellant that there was violation of sections 25-G and 25-H of the Act as well is attractive but in the absence of necessary particulars about employment etc. it is not possible to come to any conclusion that cause of action accrued to the appellant in or about 2003 for raising industrial dispute. We thus do not find any substance in this submission.

The submission that similar dispute was referred for adjudication despite delay, has been noticed only to be rejected, for, it is well settled that a wrong and illegal order cannot justify passing similar wrong or illegal order, and the fact that the Government made reference of industrial dispute in some other case is not conclusive. Besides, the circumstances in which the alleged delay occurred in the other case are not on record, the distinguishing features of that case are not known, and it is not possible for this Court to interfere with the order and direct the

Government to refer the matter simply because in some other case the dispute was referred despite delay.

We thus find no error in the order of the learned Single Judge dismissing the writ petition. The appeal is dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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